



General Assembly

***Substitute Bill No. 5466***

*February Session, 2012*

\* \_\_\_\_HB05466JUD\_\_050112\_\_ \*

***AN ACT CONCERNING SOCIAL ENTERPRISE BUSINESSES.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1      Section 1. (NEW) (*Effective January 1, 2013*) As used in this section  
2      and sections 2 to 9, inclusive, of this act:

3      (1) "Social enterprise business" means a corporation, as defined in  
4      section 33-602 of the general statutes, provided such corporation has  
5      the primary purpose of creating a social benefit;

6      (2) "Social benefit" means a material positive impact on society or  
7      the environment through one or more specific public benefits;

8      (3) "Specific public benefit" means:

9      (A) Providing low income or underserved individuals or  
10     communities with beneficial products or services;

11     (B) Promoting economic opportunity for individuals or  
12     communities beyond the creation of jobs in the normal course of  
13     business;

14     (C) Preserving or improving the environment;

15     (D) Improving human health;

16 (E) Promoting the arts or sciences or the advancement of  
17 knowledge;

18 (F) Increasing the flow of capital to entities with a social benefit  
19 purpose;

20 (G) Accomplishing any other identifiable benefit for society or the  
21 environment; or

22 (H) Significantly furthering the accomplishment of one or more  
23 charitable, cultural, scientific, literary or educational purposes within  
24 the meaning of section 170(c)(2)(B) of the Internal Revenue Code of  
25 1986, or any subsequent corresponding internal revenue code of the  
26 United States, as amended from time to time;

27 (4) "Subsidiary" means an entity that the social enterprise business  
28 owns beneficially or of record fifty per cent or more of the equity  
29 interests;

30 (5) "Independent", for purposes of third parties in relationship to a  
31 social enterprise business, means having no material relationship with  
32 a social enterprise business or any of its subsidiaries, other than the  
33 relationship of serving as the director or officer of a social enterprise  
34 business, either directly or as an owner or manager of an entity that  
35 has a material relationship with the social enterprise business or any of  
36 its subsidiaries;

37 (6) "Material relationship" means a relationship between a person  
38 and a social enterprise business or any of its subsidiaries in which:

39 (A) The person is, or has been within the last three years, an  
40 employee of the social enterprise business or any of its subsidiaries;

41 (B) An immediate family member of the person is, or has been  
42 within the last three years, an executive officer of the social enterprise  
43 business or any of its subsidiaries; or

44 (C) The person or an entity of which the person is a manager or in

45 which the person owns beneficially or of record five per cent or more  
46 of the equity interests owns beneficially or of record five per cent or  
47 more of the shares of the social enterprise business;

48 (7) "Third-party standard" means a recognized standard for  
49 defining, reporting and assessing corporate social and environmental  
50 performance that is: (A) Developed by an organization that is  
51 independent of the social enterprise business; and (B) easily  
52 understood because the following information concerning the  
53 standard is publicly available: (i) The factors considered when  
54 measuring the performance of a business; (ii) the relative weightings of  
55 those factors; and (iii) the identity of the persons that develop and  
56 control changes to the standard and the process by which those  
57 changes are made; and

58 (8) "Benefit enforcement proceeding" means a claim or action  
59 against a director or officer for:

60 (A) Failure to pursue the public social benefit purpose of the social  
61 enterprise business or any specific public benefit purpose set forth in  
62 its articles of incorporation; or

63 (B) Violation of a duty or standard of conduct under sections 1 to 9,  
64 inclusive, of this act.

65 Sec. 2. (NEW) (*Effective January 1, 2013*) (a) Any corporation  
66 organized pursuant to sections 33-635, 33-636, 33-637 and 33-639 of the  
67 general statutes may become a social enterprise business, as defined in  
68 section 1 of this act, by (1) amending its articles of incorporation and  
69 bylaws, as appropriate, to add a statement of social benefit; or (2) being  
70 a party to a plan of merger, adopted pursuant to chapter 601 of the  
71 general statutes, or share exchange in which the surviving corporation  
72 will be a social enterprise business.

73 (b) Such amendment or plan of merger shall be adopted and shall  
74 become effective in accordance with sections 33-795 to 33-803,  
75 inclusive, of the general statutes, provided:

76 (1) The notice of the shareholders' meeting to approve an  
77 amendment or plan of merger made pursuant to this section shall  
78 include a statement from the board of directors regarding (A) the  
79 reason why the board is proposing the amendment or plan of merger;  
80 and (B) the anticipated effect on shareholders of becoming a social  
81 enterprise business; and

82 (2) The amendment or plan of merger shall be approved by the  
83 higher of (A) the vote required by the articles of incorporation; or (B)  
84 two-thirds of the votes entitled to be cast by the outstanding shares of  
85 the corporation, provided if any class of shares is entitled to vote as a  
86 group, approval shall also require the affirmative vote of the holders of  
87 at least two-thirds of the votes entitled to be cast by the outstanding  
88 shares of each voting group.

89 (c) Any shareholder not voting in favor of an amendment or plan of  
90 merger pursuant to this section may require the social enterprise  
91 business to purchase for cash at their fair market value the shares  
92 owned by such shareholder.

93 Sec. 3. (NEW) (*Effective January 1, 2013*) (a) The articles of  
94 incorporation of a social enterprise business, as defined in section 1 of  
95 this act, may identify one or more specific public benefits in addition to  
96 the social enterprise business's purposes under section 33-645 of the  
97 general statutes. The adoption of a specific public benefit purpose  
98 under this section shall not limit the obligation of a social enterprise  
99 business to create a social benefit.

100 (b) A social enterprise business may amend its articles of  
101 incorporation to add, amend or delete a specific public benefit,  
102 provided there shall always be at least one specific public benefit. Any  
103 such amendment shall be adopted and become effective in accordance  
104 with sections 33-795 to 33-803, inclusive, of the general statutes.

105 (c) No social enterprise business shall have as a specific public  
106 benefit a political or legislative purpose, as defined in Section  
107 170(c)(2)(D) of the Internal Revenue Code of 1986, or any subsequent

108 corresponding internal revenue code of the United States, as amended  
109 from time to time.

110 (d) A social enterprise business shall at all times maintain and  
111 enforce an ethical code of conduct and conflict of interest policy  
112 consistent with the highest and best business practices in the industry  
113 in which it conducts its business.

114 Sec. 4. (NEW) (*Effective January 1, 2013*) A social enterprise business  
115 shall distribute at least twenty per cent of any distributed profits to a  
116 charitable organization that serves the business's specific public  
117 benefit.

118 Sec. 5. (NEW) (*Effective January 1, 2013*) (a) Each director of a social  
119 enterprise business, as defined in section 1 of this act, in discharging  
120 his or her duties as a director:

121 (1) Shall, in determining what the director reasonably believes to be  
122 in the best interests of the social enterprise business, consider the  
123 effects of any action or inaction upon the:

124 (A) Shareholders of the social enterprise business;

125 (B) Employees and workforce of the social enterprise business and  
126 its subsidiaries and suppliers;

127 (C) Interests of customers to the extent they are beneficiaries of the  
128 social benefit or specific public benefit purposes of the social enterprise  
129 business;

130 (D) Community and social considerations, including those of any  
131 community in which offices or facilities of the social enterprise  
132 business or its subsidiaries or suppliers are located;

133 (E) Local and global environment; and

134 (F) Long-term and short-term interests of the social enterprise  
135 business, including the possibility that those interests may be best

136 served by the continued independence of the social enterprise  
137 business;

138 (2) Shall not be required to give priority to the interests of any  
139 particular person or group referred to in this subsection over the  
140 interests of any other person or group unless the social enterprise  
141 business has stated its intention to give priority to interests related to  
142 its specific public benefit purpose in its articles of incorporation; and

143 (3) Shall not be subject to a different or higher standard of care  
144 when an action or inaction might affect control of the social enterprise  
145 business.

146 (b) The consideration of interests and factors as described in  
147 subsection (a) of this section shall not constitute a violation of section  
148 33-756 of the general statutes.

149 (c) A director shall not be liable if a social enterprise business fails to  
150 create a social benefit or specific public benefit.

151 (d) A director shall not be liable to the social enterprise business or  
152 any person entitled to bring a benefit enforcement proceeding for any  
153 action or failure to take action in his or her official capacity if such  
154 director performed the duties of his or her office in compliance with  
155 this section and section 33-756 of the general statutes.

156 (e) A director of a social enterprise business shall have a fiduciary  
157 duty only to those persons entitled to bring a benefit enforcement  
158 proceeding against the social enterprise business. A director of a social  
159 enterprise business shall not have any fiduciary duty to a person who  
160 is a beneficiary of a social benefit or specific public benefit purpose of  
161 the social enterprise business arising only from the person's status as a  
162 beneficiary.

163 Sec. 6. (NEW) (*Effective January 1, 2013*) (a) An officer of a social  
164 enterprise business shall consider the interests and factors described in  
165 subsection (a) of section 5 of this act in the manner provided in said

166 subsection (a) when:

167 (1) The officer has discretion in how to act or not act with respect to  
168 a matter; and

169 (2) It reasonably appears to the officer that the matter may have a  
170 material effect on:

171 (A) The creation of a social benefit or specific public benefit by the  
172 social enterprise business; or

173 (B) Any of the interests or factors referred to in subsection (a) of  
174 section 5 of this act.

175 (b) The consideration of interests and factors in the manner  
176 described in subsection (a) of this section shall not constitute a  
177 violation of the fiduciary duty of an officer to the social enterprise  
178 business.

179 (c) An officer shall not be liable to the social enterprise business or  
180 any person entitled to bring a benefit enforcement proceeding for any  
181 action or failure to take action in his or her official capacity if the  
182 officer performed the duties of the position in compliance with this  
183 section and sections 33-763 and 33-764 of the general statutes.

184 (d) An officer of a social enterprise business shall have no liability  
185 for actions taken that the officer believes, in his or her good faith  
186 business judgment, are consistent with (1) the general public benefit or  
187 any specific public benefit specified in the certificate of incorporation  
188 or bylaws or otherwise adopted by the board of directors, and (2) the  
189 requirements of any third-party standard in effect for the social  
190 enterprise business.

191 (e) An officer of a social enterprise business shall have a fiduciary  
192 duty only to those persons entitled to bring a benefit enforcement  
193 proceeding against the social enterprise business. An officer of a social  
194 enterprise business shall not have any fiduciary duty to a person that  
195 is a beneficiary of the social benefit or specific public benefit purposes

196 of the social enterprise business arising only from the person's status as  
197 a beneficiary.

198       Sec. 7. (NEW) (*Effective January 1, 2013*) A social enterprise business,  
199 as defined in section 1 of this act, may designate a social enterprise  
200 officer who shall have the authority and shall perform the duties in the  
201 management of the social enterprise business relating to the purpose of  
202 the corporation to create public benefit as set forth in the bylaws, or to  
203 the extent not inconsistent with the bylaws, prescribed by the board of  
204 directors or by direction of an officer authorized by the board of  
205 directors to prescribe the duties of the office.

206       Sec. 8. (NEW) (*Effective January 1, 2013*) (a) The duties of directors  
207 and officers of a social enterprise business, as defined in section 1 of  
208 this act, and the social benefit and specific public benefit purposes of a  
209 social enterprise business may be enforced only in a benefit  
210 enforcement proceeding and no person may bring such an action or  
211 claim against a social enterprise business or its directors or officers  
212 except as provided in this section.

213       (b) A benefit enforcement proceeding may be commenced or  
214 maintained only by:

215       (1) A shareholder who would otherwise be entitled to commence or  
216 maintain a proceeding in the right of the social enterprise business on  
217 any basis;

218       (2) A director of the social enterprise business;

219       (3) A person or group of persons who owns beneficially or of record  
220 ten per cent or more of the equity interests in an entity of which the  
221 social enterprise business is a subsidiary; or

222       (4) Such other persons or entities as may be specified in the articles  
223 of incorporation of the social enterprise business.

224       Sec. 9. (NEW) (*Effective January 1, 2013*) (a) A social enterprise  
225 business shall deliver to each shareholder, in a format approved by the



226 directors, an annual benefit report, which shall include:

227 (1) A statement of the specific goals or outcomes identified by the  
228 social enterprise business for creating social benefit and any specific  
229 public benefit for the period of the benefit report;

230 (2) A description of the actions taken by the social enterprise  
231 business to attain the identified goals or outcomes and the extent to  
232 which the goals or outcomes were attained;

233 (3) A description of any circumstances that hindered the attainment  
234 of the identified goals or outcomes and the creation of social benefit or  
235 any specific public benefit;

236 (4) Specific actions the social enterprise business will take to  
237 improve its social and environmental performance and attain the goals  
238 or outcomes identified for creating social benefit and any specific  
239 public benefit;

240 (5) An assessment of the social and environmental performance of  
241 the social enterprise business prepared in accordance with a third-  
242 party standard that has been applied consistently with prior benefit  
243 reports or accompanied by an explanation of the reasons for any  
244 inconsistent application;

245 (6) A statement of specific goals or outcomes identified by the social  
246 enterprise business and approved by the shareholders for creating  
247 social benefit and any specific public benefit for the period of the next  
248 benefit report;

249 (7) The name of each social enterprise director and the social  
250 enterprise officer, if any, and the address to which correspondence to  
251 each of them may be directed;

252 (8) A budget and balance sheet, including the accounting method  
253 used;

254 (9) A copy of the compensation plan;

255 (10) Disclosure of all financial investors;

256 (11) The compensation paid by the social enterprise business during  
257 the year to each director and a list of the one per cent most highly  
258 compensated employees;

259 (12) Code of conduct and conflict of interest policies; and

260 (13) The name of each person that owns beneficially or of record five  
261 per cent or more of the shares of the social enterprise business.

262 (b) A social enterprise business shall annually deliver and publish  
263 via its web site the benefit report to each shareholder within one  
264 hundred twenty days of the end of the fiscal year of the social  
265 enterprise business or at the same time that the social enterprise  
266 business delivers any other annual report to its shareholders.

267 (c) Concurrently with the delivery of the benefit report to  
268 shareholders as provided in subsection (b) of this section, the social  
269 enterprise business shall deliver a copy of the benefit report to the  
270 office of the Secretary of the State for filing.

271 (d) Every five years, the social enterprise business shall obtain an  
272 independent third party to review the benefit report and conduct an  
273 assessment of the social enterprise business's social benefit and specific  
274 public benefit to ensure compliance and consistency with the articles of  
275 incorporation.

276 Sec. 10. (NEW) (*Effective January 1, 2013*) Notwithstanding the  
277 provisions of sections 33-880 to 33-900, inclusive, of the general  
278 statutes, the assets of a social enterprise business that dissolves  
279 pursuant to chapter 601 of the general statutes shall be applied and  
280 distributed as follows: (1) All liabilities and other obligations of the  
281 social enterprise business shall be paid, satisfied and discharged, or  
282 adequate provision shall be made therefor, and (2) assets received and  
283 held by the corporation shall be transferred or conveyed to one or  
284 more social enterprise businesses or charitable organizations with a

285 similar social benefit as the social enterprise business being dissolved.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>January 1, 2013</i>	New section
Sec. 2	<i>January 1, 2013</i>	New section
Sec. 3	<i>January 1, 2013</i>	New section
Sec. 4	<i>January 1, 2013</i>	New section
Sec. 5	<i>January 1, 2013</i>	New section
Sec. 6	<i>January 1, 2013</i>	New section
Sec. 7	<i>January 1, 2013</i>	New section
Sec. 8	<i>January 1, 2013</i>	New section
Sec. 9	<i>January 1, 2013</i>	New section
Sec. 10	<i>January 1, 2013</i>	New section

**CE**      *Joint Favorable Subst.*

**APP**      *Joint Favorable*

**JUD**      *Joint Favorable*